

FINANCIAL REGULATION: 2009 Q3

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## Introduction

In comparison with previous quarters, relatively little new financial legislation was published in 2009 Q3.

Moreover, most of it was EU legislation. Thus, several clarifications were made in the technical provisions concerning risk management for credit institutions, with a view to facilitating their transposition in the EU countries; the legislation on the Eurosystem's provision of reserve management services was updated; the protocol on the procedure applicable to the EU countries that record excessive deficits was reviewed; and changes were approved in accounting, in financial data and in the regulations on the government finance statistics of the European System of Central Banks (ESCB).

In the case of the equity markets, new features were included in the legislation on pension schemes, private insurance schemes and social welfare mutual societies.

## **Credit institutions: amendment of technical provisions concerning risk management in the EU**

*Commission Directive 2009/83/EC of 27 July 2009* (OJEU of 28 July 2009) amends certain Annexes to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006<sup>1</sup> relating to the taking up and pursuit of the business of credit institutions, as regards technical provisions concerning risk management.

The Directive makes several clarifications to the technical provisions contained in certain Annexes<sup>2</sup> to Directive 2006/48/EC, aiming to ensure coherent transposition and application throughout the EU.

Particularly noteworthy, inter alia, are the amendments to Annex IX, "Securitisation", which specify the cases in which credit institutions are understood to have transferred significant credit risk in both traditional and synthetic securitisations.<sup>3</sup> These are cases in which:

- a) The risk-weighted exposure amounts of the mezzanine<sup>4</sup> securitisation positions held by the originator credit institution do not exceed 50% of the risk-weighted exposure amounts of all mezzanine securitisation positions existing in the securitisation.
- b) There are no mezzanine securitisation positions and the originator credit institution does not hold more than 20% of the exposure values of the securitisation positions that would be subject to deduction from own funds or to a 1,250% risk weight.

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1. See "Financial regulation: 2006 Q2", *Economic Bulletin*, July 2006, Banco de España, pp. 142-145. 2. Annexes V, VI, VII, VIII, IX, X and XII of Directive 2006/48/EC. 3. Traditional securitisation entails transfer of assets to a mortgage or asset securitisation fund (securitisation SPE) that issues securities that do not represent payment obligations of the originator institution. In contrast, synthetic securitisation involves no transfer of assets, as these remain on the institution's balance sheet; in this case, it is the inherent risk that is transferred, generally hedged by means of credit derivatives, collateral or personal guarantees. 4. Mezzanine securitisation positions shall be understood to mean all securitisation positions to which a risk weight lower than 1,250% applies and that are more junior than the most senior position in this securitisation and more junior than any securitisation position to which a credit quality step 1 or 2 is assigned, as defined in the Annexes to the Directive.

In addition to the cases described, significant credit risk may also be understood to have been transferred if the competent authority (the supervisory authority) is satisfied that the credit institution has policies and methodologies in place ensuring that the possible reduction of capital requirements is justified by a commensurate transfer of credit risk to third parties.<sup>5</sup>

The Directive also raises the credit conversion factor for liquidity facilities, which is now set, for all cases, at 50% of the nominal amount.<sup>6</sup>

Lastly, the specific rules on certain liquidity facilities that could be drawn upon in the event of widespread market disruption are eliminated.<sup>7</sup>

The Member States shall adopt and publish, by 31 October 2010 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive, and shall apply these provisions as from 31 December 2010.

**European Central Bank:  
Eurosystem reserve  
management services**

*Guideline ECB/2009/11 of 28 May 2009* (OJEU of 5 June 2009) amends Guideline ECB/2006/4 of 7 April 2006 on the Eurosystem's provision of reserve management services in euro to central banks and countries located outside the euro area and to international organisations.

The Guideline updates the definition of *reserves*, owing to the replacement of the two-tier system with the single framework for eligible collateral common to all Eurosystem credit operations.<sup>8</sup> Thus, reserves shall mean cash and all securities included in the single list (formerly "tier one assets") of the Eurosystem eligible assets database. This database contains the eligible assets for Eurosystem credit operations, which is published and updated daily on the ECB's website, save for certain assets.<sup>9</sup>

Lastly, a number of specific Eurosystem reserve management services are introduced under the cash or investment services heading; specifically, "fixed-term deposit services on a principal basis".

The Guideline came into force on 1 July 2009.

**Amendment of the  
Protocol on the excessive  
deficit procedure in the EU**

*Council Regulation 479/2009 of 25 May 2009* (OJEU of 10 June 2009) codifies Council Regulation (EC) No 3605/93 of 22 November 1993 on application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, in the interests of clarity, considering that said Regulation has been amended several times.

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5. The competent authorities shall only be satisfied if the originator credit institution can demonstrate that such transfer of credit risk to third parties is also recognised for purposes of the credit institution's internal risk management and internal capital allocation. 6. Previously a conversion factor of 20% of the nominal amount could be applied in a liquidity facility with an original maturity of up to one year, and a conversion factor of 50% if the original maturity was for more than one year. 7. Widespread disruption was understood to exist if several institutions participating in different transactions were unable to renew commercial paper at maturity, provided in all cases that this was not due to a reduction for special purposes in the institution's credit rating, or in the credit rating of the securitised exposures. To determine the exposure value, a conversion factor of 0% of the nominal amount could be applied in a liquidity facility that could only be drawn upon in the event of widespread market disruption. 8. Guideline ECB/2006/12 of 31 August 2006, which amended Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem, introduced the "single list" system, which came into force on 1 January 2007, replacing the two-tier system that had been in place since the start of the third phase of Economic and Monetary Union. 9. The exceptions are: 1) securities falling under "issuer group 3" (i.e. corporate and other issuers) and, for the remaining issuer groups, securities falling under "liquidity category V" (asset-backed securities); 2) assets held solely for the purpose of meeting the customer's pension and related obligations vis-à-vis its former or existing staff; (3) dedicated accounts opened with a Eurosystem member by a customer for purposes of rescheduling public debt within the framework of international agreements; and 4) such other categories of euro-denominated assets as decided by the Governing Council.

The key aspects of the reform are as follows.

The definitions of the terms “government”, “deficit”, “investment”, “government debt” and “gross domestic product” remain unchanged, by reference to the European system of national and regional accounts in the Community (ESA 95), adopted by Council Regulation (EC) No 2223/96 of 25 June 1996.

Member States shall continue to report their planned and actual government deficits and levels of government debt to the Commission (via Eurostat) twice a year, but a month later than under the previous schedule (i.e. before 1 April and before 1 October of the current year).

Member States shall inform the Commission (via Eurostat), as soon as it becomes available, of any major revision in their actual and planned government deficit or debt figures already reported. Major revisions shall be properly documented, especially those which result in the reference values as specified in the Protocol on the excessive deficit procedure being exceeded, or those which mean that a Member State's data no longer exceed the reference values.

The Commission (Eurostat) shall regularly assess the quality of the actual data reported by Member States and of the underlying public accounts compiled according to ESA 95. In addition, Member States shall provide the Commission (Eurostat), as promptly as possible, with the statistical information<sup>10</sup> required for the needs of the data quality assessment. They shall also provide a detailed inventory of the methods, procedures and sources used to compile actual deficit and debt data and the underlying public accounts.

In turn, the Commission (Eurostat) shall ensure a permanent dialogue with Member States' statistical authorities, including regular dialogue visits and, where necessary, methodological visits. Lastly, the Regulation establishes the procedure for publication by the Commission (Eurostat) of the Member States' actual deficit and debt data.

The Regulation came into force on 30 June 2009.

***European System of  
Central Banks:  
amendment of the legal  
framework for accounting  
and financial reporting***

*Guideline ECB/2009/18 of 17 July 2009* (OJEU of 4 August 2009) amends Guideline ECB/2006/16 of 10 November 2006 on the legal framework for accounting and financial reporting in the European System of Central Banks (ESCB), to reflect the policy developments contained in Guideline ECB/2009/10 of 7 May 2009<sup>11</sup> which updated Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem.<sup>12</sup>

In addition, the opportunity was taken to include, in the Eurosystem's financial statements, contained at Annex to Guideline ECB/2006/16, the provisions of Decision ECB/2009/16 of 2 July 2009 (OJEU of 4 July 2009) on implementation of the covered bond purchase programme.<sup>13</sup>

<sup>10</sup>. This statistical information includes, inter alia, national accounts data, excessive deficit procedure notification tables and additional questionnaires and clarification related to the notifications. <sup>11</sup>. See “Financial regulation: 2009 Q2”, *Economic Bulletin*, July 2009, Banco de España, pp. 181-182. <sup>12</sup>. Guideline ECB/2009/10 updated the general selection criteria for counterparties to allow access to certain solvent institutions (specifically, the European Investment Bank) to monetary policy operations (Eurosystem standing facilities and open market operations), in view of their special institutional nature under Community law. These entities, while not strictly credit institutions under Community law, are subject to scrutiny of a standard comparable to supervision by competent national authorities. <sup>13</sup>. In view of the extraordinary market circumstances, on 7 May and 4 June 2009 the ECB Governing Council decided to implement a covered bond purchase programme whereby the NCBs and, exceptionally, the ECB, in direct contact with the counterparties, could, in accordance with their assigned quota, directly purchase eligible covered bonds up to a foreseen nominal amount of €60 billion, the aim being, inter alia, to help ease financing conditions for credit institutions and firms, and to enhance liquidity in large segments of the corporate debt market.

The Guideline came into force on 1 July 2009.

**European System of  
Central Banks:  
amendment of the rules  
on government finance  
statistics**

*Guideline ECB/2009/20 of 31 July 2009* (OJEU of 1 September 2009) on government finance statistics (recast) not only amends Guideline ECB/2005/5 of 17 February 2005 on the statistical reporting requirements and procedures for exchanging statistical information within the ESCB, in the field of government finance statistics, but also recasts it, in the interests of clarity and transparency, in a single legal text.

National central banks (NCBs) shall continue to report, to the European Central Bank (ECB), on an annual basis, the government finance statistics (GFS) specified at Annex to the Guideline. The NCBs shall report complete data sets twice a year, the first before 15 April and the second before 15 October.<sup>14</sup> On the basis of the data reported by the NCBs, the ECB shall manage the GFS database, which shall include both euro area and EU aggregates. It shall subsequently disseminate this database to the NCBs.

Where the sources of some or all of the data are competent national authorities other than the NCBs, the latter shall establish with said authorities the appropriate modalities of cooperation to ensure a permanent structure of data transmission to fulfil the standards and requirements of the ESCB. Moreover, the temporary exemptions granted by the ECB to NCBs that were unable to comply with the data requirements are eliminated.

For electronic transmission of the statistical information, the NCBs and the ECB shall use the EXDI facility (formerly the *ESCB-Net* data communications network), without prejudice to the use of other agreed back-up means of statistical data transmission to the ECB.

Lastly, the simplified amendment procedure is maintained. This enables the Executive Board of the ECB to make technical amendments to the annexes to this Guideline, provided that such amendments neither change the underlying conceptual framework nor affect the reporting burden.

The Guideline came into force on 2 August 2009.

**Pension funds and  
schemes: amendment of  
regulations**

*Royal Decree 1299/2009 of 31 July 2009* (BOE of 1 August 2009) amends the Regulations on pension funds and schemes, approved by Royal Decree 304/2004 of 20 February 2004,<sup>15</sup> the aim being: (i) to make it easier for the long-term unemployed to surrender their pensions; and (ii) to simplify the procedure whereby pension funds may operate as open funds,<sup>16</sup> channelling investments from other pension funds.

Regarding the conditions for surrender of pensions by the unemployed, the requirement whereby persons wishing to surrender their pensions must have been unemployed for a continuous 12-month period is eliminated. Thus, pension-holders may now access the full amount of their savings, once they cease to receive unemployment benefit or, if they are not entitled to unemployment benefit, in order to meet their financial needs. A similar system applies to self-employed persons who have ceased in their activities and who are registered job-seekers.

Turning to the second aim, pension funds no longer need to apply for prior administrative authorisation to operate as open pension funds, but must simply give prior notice thereof to the

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<sup>14</sup>. In the second case, a month later than the date established previously. <sup>15</sup>. See "Financial regulation: 2004 Q1", *Economic Bulletin*, April 2004, Banco de España, p. 97. <sup>16</sup>. The key feature of open pension funds is that they are open to investments by other similar funds, while closed pension funds are exclusively for investments in the schemes themselves or in related schemes.

Directorate General of Insurance and Pension Funds (DGSFP). This is a simpler and more flexible process that should reduce the attendant costs for pension funds and, ultimately, for pension-holders.

Lastly, the authorisation to issue specific rules on communications and procedures for authorisation and registration of changes to pension funds is transferred from the DGSFP to the Ministry of Economy and Finance.

The Royal Decree came into force on 2 August 2009.

***Private insurance and social welfare mutual societies: amendment of regulations***

*Royal Decree 1298/2009 of 31 July 2009* (BOE of 1 August 2009) amends the Regulations on private insurance, approved by Royal Decree 2486/1998 of 20 November 1998,<sup>17</sup> and the Regulations on social welfare mutual societies, approved by Royal Decree 1430/2002 of 27 December 2002.

In the case of private insurance, a specific regime is introduced on prior information to be given to persons purchasing pre-paid funeral plans. Regarding social welfare mutual societies, the Royal Decree simplifies the regime for communications to the DGSFP relating to changes in the documentation supplied for granting of the administrative authorisation for commencement of the activity.

The Royal Decree came into force on 2 August 2009.

***Insurance companies: statistical-accounting data formats***

*Ministerial Order EHA/1928/2009 of 10 July 2009* (BOE of 20 July 2009) approves the annual, quarterly and consolidated statistical-accounting data formats that insurance companies must submit to the DGSFP. It also amends Ministerial Order EHA/339/2007 of 16 February 2007, which implements certain precepts of the regulations on private insurance, and it abolishes the previous regulatory framework, envisaged in Ministerial Order EHA/855/2006 of 7 February 2006, which approved the existing annual, quarterly and consolidated statistical-accounting data formats.

The new financial reporting formats are a result of the chart of accounts of insurance companies approved, by means of Royal Decree 1317/2008 of 24 July 2008,<sup>18</sup> to bring the insurance companies' accounting framework in line with International Financial Reporting Standards as from 31 December 2008. The obligation to submit quarterly statistical-accounting data formats does not extend to companies operating exclusively as reinsurers.

The data required of insurance companies are simplified: certain formats are eliminated and the data on financial investments are enhanced.

Regarding the data on packaging of pension commitments into insurance policies, the annual reporting format is simplified and the obligation is introduced to have insurance companies submit the corresponding format each quarter, as part of the quarterly statistical-accounting data. The obligation to submit this annual and quarterly information extends to all insurance companies (including social welfare mutual societies) authorised to operate in Spain that insure pension commitments, as this is deemed to be of general interest.

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17. See "Financial regulation: 1998 Q4", *Economic Bulletin*, January 1999, Banco de España, pp. 102-105. 18. See "Financial regulation: 2008 Q3", *Economic Bulletin*, October 2008, Banco de España, pp. 137 -139.

Lastly, the time-scale established means the above-mentioned companies must submit their annual statistical-accounting data formats for 2008 to the DGSFP along with the quarterly formats for 2009.

The Ministerial Order came into force on 21 July 2009.

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